United States District Court, Eastern District of North Carolina, Raleigh Division

Civil Action No. 189

STATE OF NORTH CAROLINA; NORTH CAROLINA UTILITIES COMMISSION; CHARLOTTE SHIPPERS & MFRS. ASSOC., INC.; NORTH CAROLINA DIVISION OF THE TRAVELERS PROTECTIVE ASSOCIATION OF AMERICA AND B. F. RUSSELL; AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, PLAINTIFFS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, DEFENDANTS

JURISDICTIONAL STATEMENT BY INTERVENOR-PLAINTIFFS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The Intervenor-Plaintiff, the Economic Stabilization Director by the Price Administrator, respectfully presents the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the order and decree in the above-entitled cause sought to be reviewed:

A STATUTORY PROVISIONS

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, 36 Stat. 1150, October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, Sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, Sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191; Sec. 35, 31 Stat. 85; April 30, 1900, c. 339, Sec. 86, 31 Stat. 158; March 3, 1909, c. 269, Sec. 1, 35 Stat. 838; March 3, 1911, c. 231, Secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, Sec. 2, 38 Stat. 804; February 13, 1925, c. 229, Sec. 1, 43 Stat. 938).

B. THE STATUTE OF A STATE, OR THE STATUTE OR TREATY OF THE UNITED STATES, THE VALIDITY OF WHICH IS INVOLVED

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved. See statement of nature of case below.

C. DATE OF THE JUDGMENT OF DECREE SOUGHT TO BE REVIEWED AND THE DATE UPON WHICH THE APPLICATION FOR APPEAL WAS PRESENTED

The order and decree sought to be reviewed was entered on July 22, 1944. The petition for appeal was presented on September 16, 1944, together with an assignment of errors.

D. NATURE OF CASE AND OF RULINGS BELOW

This Appeal is from a final order and decree of the District Court of the United States for the Eastern District of North Carolina, entered July 22, 1944, denying Intervenor-Plaintiff's (Appellants') request for an injunction to set aside an order[1] of the Interstate Commerce Commission requiring the North Carolina railroads to maintain and apply passenger coach fares for intrastate transportation in North Carolina which shall be on bases no lower than the passenger fares presently maintained and applied by said railroads for accommodations in interstate application to and from North Carolina. The proceeding before the Commission was instituted by a petition of the North Carolina railroads under section 13 (4) of the Interstate Commerce Act, following a decision by the North Carolina Utilities Commission refusing to authorize an increase in intrastate passenger coach fares from the general basis of 1.65 to 2.2 cents per mile because the railroads had failed to show any present need for the added revenue. The order of the Commission causes a direct and substantial increase in the cost of living and in the costs of many business enterprises in North Carolina in which salesmen and other employees are required to engage in intrastate railroad travel.

Appellants intervened as Protestants in the proceeding before both the State and Federal commis-

[1] The Order in question was issued on May 24, 1944, as a "Corrected Order," dated May 8, 1944, in Docket No. 29036, *North Carolina Intrastate Coach Fares*, 258 I. C. C. 133, Commissioners Splawn, Aitchison, and Mahaffie dissenting.

sions. In the proceedings in the District Court, the Court granted Appellants' motion to intervene, accompanied by a complaint (petition) which alleged, among other contentions, that the Commission had failed or refused to give full effect to wartime conditions and the stabilization legislation, although it was under a duty to do so.

The District Court stated that full consideration had been given to the representations of the Price Administrator in this proceeding; and Appellants do not claim that the Commission denied them any procedural rights. Further, Appellants concur—and stated their concurrence to the District Court—with the view expressed in the Commission's opinion in this and other cases that the stabilization legislation "made no changes in or additions to the Interstate Commerce Act with respect to the rates, fares, and charges of common carriers by railroad." But the Appellants pointed out that this Court itself had recognized that, in the administration of the Interstate Commerce Act, the Commission was under a duty to accommodate the application of the statute to other Congressional policies, and in particular was under a duty to give full effect to wartime conditions and the stabilization legislation.

It is Appellants' contention that the facts of record provide no substantial basis in evidence for the Commission's fifth finding, approved by the District Court, that traffic moving under the intrastate fares was not contributing its fair share of the revenue requested to enable Respondents to render adequate and efficient

transportation service.[2] In its decision, the Commission found that, as a result of wartime conditions, net revenues of North Carolina railroads had become extraordinarily high, and the passenger service was earning very substantial profits. Computation of the passenger operating costs per mile indicates them to be about .98 cents in 1942 as compared to the intrastate fare of 1.65.[3] Hence, the Commission's fifth finding must have been predicated on the fact, relied on to

---

[2] Such a finding is essential to a finding of undue, unjust, and unreasonable discrimination against interstate commerce under section 13 (4) of the Interstate Commerce Act. *Florida* v. *United States*, 282 U. S. 194, 292 U. S. 1. The Commission's order also found prejudice to passengers traveling in interstate commerce. Since the issue with respect to this determination would be resolved by an interpretation of the Interstate Commerce Act, without presenting a question of the Commission's duty to give effect to the stabilization legislation, the Appellants have left this aspect of the case to be raised for full consideration by the assignment of four errors by the Appellant State.

[3] This figure is an approximation computed from the railroad's evidence; they did not attempt to prove the cost of the service. Their exhibits showed, however, that the per passenger coach-mile revenue for 1942 was 1.560 cents and that the ratio of passenger operating expenses to revenues was 63 percent. Multiplying these figures results in the conclusion that the expense per passenger coach-mile was about .98 of 1 cent. This approximation is probably too high, rather than too low; the unit cost per coach passenger should be less than the average for the passenger service, because of the greater increase in coach loadings as compared with parlor and sleeping cars. Furthermore, the unit cost undoubtedly was lower for 1943 than for 1942, because, as shown by the record, the operating ratio of seven principal North Carolina railroads for the first nine months of 1942 dropped to 52.3, while coach travel in the Southern region increased 128.5 percent for the first ten months of 1943, as compared with the corresponding period of 1942.

sustain the reasonableness of the interstate rates at the level of 2.2 cents per mile, that passenger service deficits were incurred prior to 1942. In other words, as the District Court suggested in approving the interstate rates, the Commission looked not to the present but to the past and future in making its determination.

Such reasoning, however, nullifies the Commission's duty to give full effect to wartime conditions and the stabilization legislation or to meet the *present* economic crisis. To allow an industry to increase ceiling prices or rates to take advantage of wartime conditions in order to compensate for business losses during peacetimes—past or future—is diametrically opposed to the objective of that legislation.

In sharp contrast to the Interstate Commerce Commission's decision is the decision of the North Carolina Utilities Commission which considered the issues from a viewpoint consistent with the war stabilization program, and refused to authorize the increases of rates because of the phenomenally high net revenues enjoyed by the railroads, and because of their failure to show present need for additional revenue from the increased fares. In so doing, the North Carolina Utilities Commission gave effect both to section 1 of the Stabilization Act of 1942 (50 U. S. C. App. § 961), which expressly provides for the participation by state and municipal regulatory agencies in the wartime stabilization program, and also to the President's Executive Order No. 9328, section 4, 8 F. R. 4681, which expressly requests all State agencies to

disapprove rate increases consistently with the Stabilization Act and other State and Federal legislation.

The case presents the following questions:

(1) Was the Interstate Commerce Commission justified in disregarding wartime considerations and acting instead upon peacetime considerations in overriding an order of the North Carolina Utilities Commission which, by declining to authorize passenger fare increases not presently necessary, gives full effect to the wartime conditions consistently with the stabilization legislation?

(2) Did the order and decision of the Interstate Commerce Commission constitute an unlawful disregard, in the application of section 13 (4) of the Interstate Commerce Act, of the policy established by Congress in the stabilization legislation?

E. THE QUESTIONS ARE SUBSTANTIAL

The questions involved in this case are of importance to those traveling intrastate between points within the Southern region, not only in North Carolina, but also in Alabama, Tennessee, and Kentucky. These States are taking an appeal from a like District Court decision. Moreover, if the decision by this Court were favorable to North Carolina, possibly other southern state commissions would feel free to require that the carriers reinstate the intrastate fares in effect on September 15, 1942, on the basis of 1.65 cents per mile.

Apart from the effect of the decision on the intrastate fare structures of a number of states, the legal

issue is important. While Appellants appreciate that, as this Court has said, the weight to be given the Price Administrator's contentions is for the Commission to determine, they do not suppose that this statement by the Court had the effect of relieving the Commission from its duty to make basic findings supported by substantial evidence, *Florida* v. *United States,* 282 U. S. 194. Yet, if the facts of record herein do not compel the conclusion that, were full effect given to wartime conditions and the stabilization legislation, no increases of fares would be required by the Interstate Commerce Act, then Apellants cannot conceive of any case in which a finding could be made that a proposed increase would contravene the national stabilization policy. Consequently, approval of the Commission's finding in this case would have the effect of denying the sanction of judicial review to the Commission's duty to give full effect to wartime conditions and the stabilization legislation.

F. CASES SUSTAINING JURISDICTION

Interstate Commerce Commission v. *Jersey City,* 321 U. S. 755.

McLean Trucking Co. v. *United States,* 321 U. S. 67.

Southern S. S. Co. v. *National Labor Relations Board,* 316 U. S. 31.

Federal Power Commission v. *National Gas Pipeline Co.,* 315 U. S. 575, 590.

Florida v. *United States,* 282 U. S. 194.

G. DECREE AND OPINION OF THE DISTRICT COURT

Appended to this statement is a copy of the opinion of the District Court and a copy of the decree of said Court sought to be reviewed.*

We therefore respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

For the Economic Stabilization Director by the Price Administrator:

RICHARD H. FIELD,
General Counsel,
DAVID F. CAVERS,
Assistant General Counsel,
BERNARD M. FITZGERALD,
Transportation and Public Utilities Division,
M. D. MILLER,
Chief Counsel, Common Carrier Section,
Transportation and Public Utilities Division,
Office of Price Administration, 5319 Federal Office Building No. 1, 2d & D Streets, SW., Washington 25, D. C.

Dated September 16, 1944.

I have authorized the filing of this jurisdictional statement.

CHARLES FAHY,
Solicitor General.

Dated September 16, 1944.

---

*(CLERK'S NOTE.—The decree and opinion are printed as appendices to the Jurisdictional Statement in the case of *North Carolina, et al.* v. *U. S.*, No. 560, October Term, 1944, and are not reprinted here.)

U. S. GOVERNMENT PRINTING OFFICE: 1944